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10 UNITED STATES DISTRICT COURT

11 DISTRICT OF NEVADA

12 MICHAEL ROWE ,

13 Plaintiff,

14 vs.

15 LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, *et al.*,

16 Defendants.

Case No.: 2:21-cv-00724-JAD-BNW

**LVMPD DEFENDANTS' MOTION TO
STAY DISCOVERY**

17
18 Defendants, Las Vegas Metropolitan Police Department, Fred Boncy, Harrison Porter
19 and Robert Steinbach ("LVMPD Defendants"), by and through their counsel, Kaempfer Crowell,
20 move to stay discovery in this case until the Court resolves LVMPD Defendants' pending
21 Motion for Dismiss, (ECF No. 9). A stay is warranted because LVMPD Defendants' Motion to
22 Dismiss will resolve all claims in this matter. LVMPD Defendants attempted to meet and confer
23 with Plaintiff before moving to stay proceedings. Plaintiff initially agreed but later stated he
24 would not sign the stipulation agreeing to the stay. As such, this Motion is necessary.

1 DATED this 8th day of September, 2021.

2 KAEMPFER CROWELL

3 By: /s/ Lyssa S. Anderson

4 LYSSA S. ANDERSON (Nevada Bar No. 5781)

5 RYAN W. DANIELS (Nevada Bar No. 13094)

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Attorneys for Defendants

7 *LVMPD, Fred Boncy, Harrison Porter and Robert*
8 *Steinbach*

9 **Exhibit List**

10 **Exhibit A:** August 12, 2021 E-mail from Plaintiff to Kris Kalkowski

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. BACKGROUND**

13 This case arises from Plaintiff's allegations that he received improper medical care after
14 his femur was broken. Plaintiff went to make a police report where he encountered Officer
15 Bouncy initially and then Sgt. Porter and Detective Steinbach. Plaintiff was referred to an
16 attorney by the LVMPD Defendants as Plaintiff wanted Officers to investigate the various
17 medical providers under NRS 200.495; a civil statute. Plaintiff now brings suit alleging that his
18 First Amendment rights were violated. It is the position of the LVMPD Defendants that
19 Plaintiff's claim is not supported by law and should be dismissed.

20 **A. Procedural History**

21 Plaintiff filed suit on May 3, 2021. Plaintiff's Complaint alleges a single claim against
22 the LVMPD Defendants for a First Amendment violation. The LVMPD Defendants were served
23 with the Complaint and filed a Motion to Dismiss. [ECF No. 9]. The LVMPD Defendants
24 contend that Plaintiff's claim fails because it fails to state a claim upon which relief can be

1 granted. [ECF No. 9].

2 Plaintiff filed a Response to the Motion to Dismiss, [ECF No. 13] and the LVMPD
3 Defendants filed a Reply, [ECF No. 15]. Plaintiff has also filed two separate Motions for
4 Sanctions [ECF Nos. 16 and 18] relating to the Motion to Dismiss. This Court has already
5 denied the first Motion for Sanctions at ECF No. 16. [ECF No. 17].

6 There currently is no Scheduling Order in place and the Motion to Dismiss is fully
7 briefed and pending.

8 B. Meet-and-Confer Attempt

9 The LVMPD Defendants' Counsel, Kris Kalkowski, had a telephone call with Plaintiff
10 on the afternoon of August 12, 2021. A proposed Stipulation to Stay Discovery pending the
11 outcome of the Motion to Dismiss was discussed. Plaintiff agreed to review and consider a
12 Stipulation. A draft Stipulation was prepared and e-mailed to Plaintiff for consideration. That
13 same night, Plaintiff responded to Counsel's e-mail not approving the Stipulation but advising he
14 intended to file another Motion for Sanctions. **Exhibit A.** Now, the LVMPD Defendants bring
15 this Motion.

16 II. ARGUMENT

17 LVMPD Defendants seek a brief stay of discovery in this case until the Court resolves
18 the fully briefed and pending Motion to Dismiss, [ECF No. 9]. Federal Rule of Civil Procedure
19 26 authorizes the Court to enter such a stay, and this Court has broad discretion in making that
20 decision. *In re Netflix Antitrust Litig.*, 506 F. Supp. 2d 308, 321 (N.D. Cal. 2007); *Rosenstein v.*
21 *Clark Cty. Sch. Dist.*, No. 2:13-cv-1443-JCM-VCF, 2014 WL 2835074, at *2 (D. Nev. June 23,
22 2014). Three factors guide the Court's decision: (a) the pending motion is potentially dispositive
23 of all claims in the case; (b) the potentially dispositive motion can be decided without additional
24 discovery; and (c) the Court has taken a "preliminary peek" at the merits of the potentially

dispositive motion “and finds the motion sufficiently meritorious to warrant a stay.” *Martinez v. Las Vegas Metro. Police Dep’t*, No. 2:20-cv-00618-JCM-NJK, 2020 WL 3166611, at *1 (D. Nev. June 9, 2020) (citing *Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D. Nev. 2013)).

A. The Pending Motion Is Likely Dispositive of the Sole Claim in This Case.

The LVMPD Defendants’ Motion to Dismiss lays out two bases as to why Plaintiff’s sole claim for First Amendment violation is futile. First, as stated above, Plaintiff’s claim involves LVMPD Officers not taking a police report from him related to his allegations that he received improper medical care causing him damage. The Motion to Dismiss cites to various controlling law as to why Plaintiff’s claim fails. For example, Plaintiff’s complaint concerning his medical care is not an issue of “public concern” but is merely his own concern. And, LVMPD is not the proper place for investigation into possible claims of “health insurance fraud”; the Commissioner and Attorney General are. [ECF No. 9].

B. LVMPD Defendants’ Motion to Dismiss Does Not Require Additional Discovery.

No party needs additional discovery to resolve the issues raised in the LVMPD Defendants’ to Dismiss. This Motion requires review only of Plaintiff’s allegations on their face and in the light most favorable to him. *See Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012) (“Analysis under Rule 12(c) is substantially identical to analysis under Rule 12(b)(6) because, under both rules, a court must determine whether the facts alleged in the complaint, taken as true, entitle the plaintiff to a legal remedy.”) (internal quotations omitted). As a result, granting a stay would not deprive either party from facts or evidence needed to advance this case on its merits.

1 C. **LVMPD Defendants' Motion to Dismiss Has a High Likelihood of Success on**
2 **Its Merits and Is Unopposed.**

3 Plaintiff's sole claim simply cannot survive the Motion to Dismiss. Indeed, Plaintiff's
4 Opposition to the Motion to Dismiss, [ECF No. 13], fails to present any legal arguments in
5 opposition to the Motion. [ECF No. 15]. Plaintiff merely reasserts his allegations from the
6 Complaint. Plaintiff's lack of a substantive response bolsters the fact that Plaintiff's claim is
7 related to a private matter and not a matter of "public concern" making it impossible to proceed.

8 **III. CONCLUSION**

9 The parties have not yet engaged in discovery and there has been no Scheduling Order
10 entered. Because this matter involves a sole claim, even if it were to survive the pending Motion
11 to Dismiss, there will be minimal discovery. There will be no prejudice to any party from a stay.
12 The claim is solely based on law. As such, a stay of discovery pending the outcome of the
13 Motion to Dismiss is in the best interest of the parties and this Court.

14 DATED this 8th day of September, 2021.

15 KAEMPFER CROWELL

16 By: /s/ Lyssa Anderson

17 LYSSA S. ANDERSON (Nevada Bar No. 5781)

18 RYAN W. DANIELS (Nevada Bar No. 13094)

19 KRISTOPHER J. KALKOWSKI (Nevada Bar No. 14892)

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21 Las Vegas, Nevada 89135

22 *Attorneys for Defendants*

23 *LVMPD, Fred Boncy, Harrison Porter*

24 *and Robert Steinbach*

Order

IT IS ORDERED that ECF No. 21
is GRANTED as unopposed
under Local Rule 7-2(d). IT IS
FURTHER ORDERED that the
hearing set for 11/16/2021 on this
motion is VACATED.

CERTIFICATE OF SERVICE

I certify that I am an employee of KAEMPFER CROWELL, and that on the date below, I caused the foregoing **LVMPD DEFENDANTS' MOTION TO STAY DISCOVERY** to be served via CM/ECF and/or First Class Mail (where indicated) addressed to the following:

Michael Rowe
2300 E. Silverado Ranch Blvd., Suite 1025
Las Vegas, NV 89183
vegassm@icloud.com

Plaintiff, Pro Se

DATED this 8th day of September, 2021.



an employee of Kaempfer Crowell